

Amendments to the Electricity Industry Participation Code 2010

Electricity Industry Participation Code 2010

Part 1

Preliminary provisions

...

1.1 Interpretation

(1) In this Code, unless the context otherwise requires,—

...

buyer, for the purposes of subpart 5, subpart 5C, and subpart 7 of Part 13, means—

- (a) in respect of a **contract for differences**, the fixed-price payer, being the **party** obliged to make payments at a fixed price from time to time during the **term** of the contract; or
- (b) in respect of a **fixed-price physical supply contract**, the purchaser of **electricity**; or
- (c) in respect of an **options contract**, either—
 - (i) the **party** paying the **premium**; or
 - (ii) if there is no **premium**, the **party** who agrees to be the **buyer** for the purposes of subpart 5, subpart 5C, or subpart 7 (as applicable) of Part 13; or
 - (iii) if neither **party** agrees to be the **buyer**, the **party** whose name is the first alphabetically; or
- (ca) for the purposes of subpart 5 of Part 13, in respect of a contract prescribed by the **Authority** under clause 13.219B as a **risk management contract**, either—
 - (i) the **party** specified as the buyer in the contract; or
 - (ii) if neither **party** is specified as the buyer, the **party** whose name is the first alphabetically; or
- (cb) for the purposes of subpart 5C of Part 13, in respect of a contract prescribed by the **Authority** under clause 13.219B as a **risk management contract**, the **party** specified as the buyer in the contract; or
- (d) for the purposes of subpart 7 of Part 13, in respect of any other contract, the **party** consuming the **electricity** that the contract relates to; or
- (e) for the purposes of subpart 5C of Part 13, a **buyer**—
 - (i) includes a person that has indicated to a **gentailer** a desire to obtain **risk management contracts** from a **gentailer**; and
 - (ii) does not include:
 - (A) a **buyer** in relation to a **materially large contract** subject to subpart 7 of Part 13; or
 - (B) a **gentailer's own internal business units**

buyer confidential information, for the purposes of subpart 5C of Part 13, means—

- (a) information that—
 - (i) a **buyer** provides to a **gentailer** in relation to the provision of **risk management contracts**; or
 - (ii) a **gentailer** otherwise holds or obtains in relation to the provision of **risk management contracts** to a **buyer**; and
- (b) information that—
 - (i) is by its nature confidential or proprietary to the **buyer**; or
 - (ii) is disclosed in confidence by the **buyer**; or
 - (iii) a **gentailer** knows or ought reasonably to know is confidential to the **buyer**; or
 - (iv) concerns a person that is, or intends to become, a customer of the **buyer**; but
- (c) does not include—
 - (i) information that was publicly available at the time of receipt, or that becomes publicly available other than as a result of a breach of confidentiality; or
 - (ii) information that was obtained bona fide by a **gentailer** from another person who is in lawful possession of the information and who did not acquire the information directly or indirectly from the **buyer** under an obligation of confidence; or
 - (iii) information, or types of information, that a **buyer** agrees with the **gentailer** is not **buyer confidential information**

...

commercial information, for the purposes of subpart 5C of Part 13, means information that is—

- (a) held by a **gentailer**; and
- (b) relates to the supply by that **gentailer** of **risk management contracts**, including the **gentailer's**—
 - (i) current capacity to supply **risk management contracts**; and
 - (ii) future capacity to supply **risk management contracts**; but
- (c) does not include:—
 - (i) any information that—
 - (A) has been superseded by identifiable new information;
 - (B) is more than 18 months old; or
 - (C) is otherwise not current; or
 - (ii) any information, or types of information, that the **gentailer** and the **Authority** agree in writing is not commercial information

...

discrimination, for the purposes of subpart 5C of Part 13, has the meaning set out in clause 13.236P

...

gentailer means—

- (a) Contact Energy Limited:

- (b) Genesis Energy Limited:
- (c) Mercury NZ Limited:
- (d) Meridian Energy Limited

...

interconnected bodies corporate has the meaning given to it in section 2(7) of the Commerce Act 1986

...

internal business units means the separate functions of a **gentailer's** business (including, for example, generation, retail and other business units), even where these functions are not clearly separated in the **gentailer's** organisational structure, and includes functions undertaken by any **interconnected bodies corporate** of the **gentailer**

...

mass market customers means all those customers of a **retailer** who the **retailer** classifies as mass market or who are commonly understood to be **mass market customers** in accordance with standard industry practice

...

network reporting regions means geographical regions defined by a group of **NSPs**, generally formed by historic Electricity Power Board networks (with some aggregations) and aligning with retail pricing regions commonly used in the electricity industry, and which are commonly understood to be **network reporting regions** in accordance with standard industry practice

...

non-discrimination policy has the meaning given to it in clause 13.236R

non-discrimination obligations means the non-discrimination obligations in clause 13.236Q

...

retailer, means as follows:

- (a) except as provided in paragraphs (b) and (c), a **participant** who supplies **electricity** to another person for any purpose other than for resupply by the other person:
- (b) in Parts 1 (except for the definition of specified participant), 8, 10, and 12 to 15, a **participant** who supplies **electricity** to a **consumer** or to another **retailer**:
- (c) in subpart 4 of Part 9, the **retailer** defined in paragraph (a) who is recorded in the **registry** as being responsible for the **ICP** described in clause 9.21(1)(b):-:
- (d) for the purposes of clauses 13.259 to 13.266 only, does not include a gentailer.

...

retail price consistency assessment means an assessment of the difference between a **gentailer's**—

- (a) expected costs of supply to a **retail segment** (expected cost of **electricity** (based on a hypothetical portfolio of **risk management contracts** consistent with rational and prudent risk management practices) and expected non-**electricity** costs); and
- (b) that **gentailer's** retail prices to a **retail segment**

retail price consistency assessment report has the meaning given to it in clause 13.236W(4)

retail segment, for the purposes of subpart 5C of Part 13, has the meaning given to it in clause 13.236W(1)(b)

...

risk management contract, for the purposes of subpart 5, subpart 5C, and subpart 7 of Part 13, means—

- (a) a **contract for differences**; or
- (b) a **fixed-price physical supply contract**; or
- (c) an **options contract**; or
- (ca) for the purposes of subpart 5 and subpart 5C of Part 13, a contract prescribed by the Authority under clause 13.219B as a risk management contract; but
- (d) does not include—
 - (i) an **FTR**;
 - (ii) for the purposes of subpart 5C of Part 13, a **materially large contract** subject to subpart 7 of Part 13

...

Electricity Industry Participation Code 2010

Part 13

Trading arrangements

...

Subpart 5C—Non-discrimination obligations

13.236O Purpose of this subpart

The purpose of this subpart is to promote competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers by requiring **gentailers** to supply **risk management contracts** to **buyers** on a non-**discriminatory** basis to—

- (a) ensure even-handed supply of **risk management contracts**; and
- (b) support the liquidity and competitive pricing of **risk management contracts**; and
- (c) facilitate investment in the electricity industry.

Meaning of discrimination

13.236P Meaning of discrimination

In this subpart, **discrimination** means engagement in differential treatment except to the extent a particular difference in treatment is objectively justifiable; and **discriminate** and **discriminatory** have corresponding meanings.

Non-discrimination obligations

13.236Q Non-discrimination obligations

The **non-discrimination obligations** are as follows—

Non-discrimination obligation 1

Non-discriminatory supply

- (1) A **gentailer** must not **discriminate** between **buyers** for the supply of **risk management contracts**.
- (2) A **gentailer** must not **discriminate** against **buyers** in favour of its own **internal business units** for the supply of **risk management contracts**.
- (3) A **gentailer** must not **discriminate** against **buyers** in favour of its own **internal business units** when pricing **risk management contracts**.
- (4) For the avoidance of doubt, subclause (3) requires pricing of **risk management contracts** in such a way as to ensure that any **buyer** that supplies **electricity** to end users at retail, that is as efficient with regard to operating costs as the **gentailer's** own retail **internal business unit**, and adopts a reasonable risk management approach, is not unduly deterred from operating profitably.

Non-discrimination obligation 2

Obligation to trade in good faith

- (5) A **gentailer** must engage with **buyers** in good faith and in a timely and constructive manner in relation to the supply of **risk management contracts**.

Non-discrimination obligation 3

Objective credit assessments

- (6) A **gentailer's** credit terms and collateral arrangements relating to the supply of **risk management contracts** to **buyers** must reflect a reasonable, consistent and transparent assessment of the risk of trading with a **buyer**.

Non-discrimination obligation 4

Equal access to commercial information

- (7) A **gentailer** must ensure that any **commercial information** relating to **risk management contracts** made available to its **internal business units** is also made available to **buyers** at the same time.

Non-discrimination obligation 5

Protection of confidential information

- (8) A **gentailer** must—
 - (a) protect **buyer confidential information**; and
 - (b) not use **buyer confidential information** other than for a purpose for which it was provided to the **gentailer**; and
 - (c) establish robust processes to prevent disclosure of **buyer confidential information** to, and use of **buyer confidential information** by, any of the **gentailer's internal business units** that may compete with the **buyer**.

Non-discrimination obligation 6

Record keeping

- (9) A **gentailer** must establish, maintain and keep records that demonstrate its compliance with these **non-discrimination obligations**.

Non-discrimination policy and implementation plan

13.236R Non-discrimination policy

- (1) A **gentailer** must at all times maintain an internal policy (“**non-discrimination policy**”) that—
- (a) details operational policies, practices, methodologies, processes and accountabilities in place to ensure the **gentailer’s** trading of **risk management contracts** occurs in accordance with the **non-discrimination obligations**; and
 - (b) is of a reasonable standard, taking into account the nature, scale and complexity of the **gentailer’s** operations.
- (2) The **non-discrimination policy** referred to in subclause (1) must be reviewed and approved by the **gentailer’s** board at least once a year.
- (3) Each time the **gentailer** amends its **non-discrimination policy**, the **gentailer** must disclose a copy of the amended **non-discrimination policy** to the **Authority** within 10 **business days** of the amended policy taking effect.
- (4) Without limiting subclause (1), the **non-discrimination policy** must include—
- (a) detailed methodologies applied by the gentailer for the purposes of ensuring compliance with clause 13.236Q(1) to (4); and
 - (b) criteria for determining whether an objectively justifiable reason may exist for the purposes of compliance with clause 13.236Q(1) to (3); and
 - (c) a policy detailing expectations for the **gentailer’s** engagement with **buyers** for the purposes of clause 13.236Q(5); and
 - (d) a credit terms and collateral arrangements policy consistent with the requirements in clause 13.236Q(6); and
 - (e) an information control policy for the purposes of clause 13.236Q(7) to (9).

13.236S Implementation plan

- (1) A **gentailer** must prepare an implementation plan detailing its approach to complying with the **non-discrimination obligations**.
- (2) A **gentailer’s** implementation plan is to be provided to the **Authority** and published on the **gentailer’s** website within 45 **business days** after the date on which this subpart comes into force.
- (3) The implementation plan must include (without limitation) the **gentailer’s**—
- (a) **non-discrimination policy**; and
 - (b) planning (including any steps already taken) for training its employees, directors and agents on compliance with the **non-discrimination obligations**; and
 - (c) planning (including any steps already taken) for ensuring ongoing compliance with the **non-discrimination obligations** (for example, through regular internal audits).

Record-keeping and disclosure requirements

13.236T Record-keeping

- (1) A **gentailer** is required to establish, maintain and keep comprehensive records that demonstrate how it meets the **non-discrimination obligations**.
- (2) Without limiting subsection (1), a **gentailer** must establish, maintain and keep records of—
 - (a) the risk-adjusted capacity of the **gentailer** to offer **risk management contracts** over the next 3 years; and
 - (b) the **gentailer's** monthly **electricity** supplied over the past 12 months; and
 - (c) the **gentailer's** expected monthly **electricity** supply over the next 3 years; and
 - (d) the **gentailer's** methodologies for pricing of **risk management contracts**; and
 - (e) any reason for discriminating between **buyers**, or against **buyers** in favour of a **gentailer's** own **internal business units**, for the purposes of non-discrimination obligation 1 of the **non-discrimination obligations** (set out in clause 13.236Q(1) to (3)); and
 - (f) all complaints received by the **gentailer** by any person about any conduct of the **gentailer** that the person believes might constitute a breach of this subpart.

13.236U Appointment of independent auditor and submission of audit report

- (1) A **gentailer** must appoint an independent **auditor**, who is suitably qualified and experienced, to conduct an annual **audit** of the **gentailer's** compliance with its obligations under this subpart as at 1 July for the previous 12 months (commencing 1 July 2027).
- (2) The **gentailer** must ensure that the independent **auditor** provides a written audit report to the **gentailer** detailing the findings of any **audit** under subclause (1).
- (3) The **gentailer** must submit the audit report referred to in subclause (2) to the **Authority** no later than 30 September each year.

13.236V Annual reporting

- (1) A **gentailer** must provide an annual report to the Authority no later than 30 September each year that demonstrates whether and how that **gentailer** has met the **non-discrimination obligations** for the 12-month period prior to 1 July that year (commencing 1 July 2027).
- (2) Without limiting subsection (1), the annual report must include the matters set out in clause 13.236T(2).
- (3) When providing the annual report to the **Authority**, a **gentailer** must certify that the **gentailer** has complied with the **non-discrimination obligations** during the relevant 12-month period (except for any breaches that have been reported, or are reported with the certificate, to the **Authority** in accordance with clause 13.236Y).
- (4) The certification referred to in subclause (3) must be—
 - (a) signed by at least two directors of the **gentailer**; and
 - (b) accompanied by a statement confirming the truth and accuracy of the certification to the best of those directors' knowledge and belief having made all reasonable enquiries (including an explanation of the enquiries made).

13.236W Retail price consistency assessments

- (1) A **gentailer** must undertake a **retail price consistency assessment**—

- (a) for each of its retail brands; and
 - (b) in relation to each of the following **retail segments**—
 - (i) offers by the **gentailer** for new **mass market customers**; and
 - (ii) the **gentailer's** existing **mass market customers**; and
 - (c) in each **network reporting region**; and
 - (d) as at—
 - (i) the date this subpart comes into force; and
 - (ii) 1 January and 1 July each year.
- (2) The purpose of a **retail price consistency assessment** in subclause (1) and **retail price consistency assessment report** in subclause (4) is to assist with the monitoring and enforcement of compliance with clause 13.236Q(3) and (4).
- (3) The Authority must publish guidance to assist **gentailers** in undertaking **retail price consistency assessments**.
- (4) Each time a **gentailer** undertakes any **retail price consistency assessment** required by subclause (1), the **gentailer** must prepare a **retail price consistency assessment report** including the following information—
- (a) the **gentailer's** expected cost of **electricity** associated with supply to the relevant **retail segment** expressed as an amount of dollars per **MWh**; and
 - (b) where there has been a change in the approach used to calculate the expected cost of **electricity** in a **retail price consistency assessment**—
 - (i) an explanation for the change in approach; and
 - (ii) for the four **retail price consistency assessment reports** following that change in approach, the information required under subclause (4)(a) using the previous approach, unless the difference in the expected cost of **electricity** calculated using the old and new approaches in the first **retail price consistency assessment** following the change in approach is less than 5 per cent; and
 - (c) the **gentailer's** expected non-**electricity** costs associated with the supply of **electricity** to the relevant **retail segment** expressed as an amount of dollars per **MWh**, including—
 - (i) expected cost of **metering** services associated with the supply of **electricity** to the relevant **retail segment** expressed as an amount of dollars per **MWh**; and
 - (ii) expected cost of network (distribution and transmission) services associated with the supply of **electricity** to the relevant **retail segment** expressed as an amount of dollars per **MWh**; and
 - (iii) expected cost of levies associated with the supply of **electricity** to the relevant **retail segment** expressed as an amount of dollars per **MWh**; and
 - (iv) expected retail operating costs (including a contribution to the **gentailer's** shared and common costs, disclosed separately) associated with the supply of **electricity** to the relevant **retail segment** expressed as an amount of dollars per **MWh**; and
 - (d) the **gentailer's** retail prices to the relevant **retail segment** expressed as an amount of dollars per **MWh**; and
 - (e) the **gentailer's** margin determined by the **retail price consistency assessment** expressed as an amount of dollars per **MWh**; and

- (f) detailed information on the expected load profile and volumes in **MWh of electricity** for the relevant **retail segment**; and
 - (g) the information referred to in subclause (4)(a) to (f) geographically aggregated to provide a national total for each of the **retail price consistency assessments** undertaken under subclause (1)(b)(i) and (ii); and
 - (h) a full and clear explanation of the **gentailer's** approach to undertaking the **retail price consistency assessment**, including—
 - (i) a description of the hypothetical portfolio of **risk management contracts** used to calculate the expected cost of **electricity** in subclause (4)(a) and (b), including—
 - (A) an explanation of the approach taken by the **gentailer** to constructing its hypothetical portfolio of **risk management contracts** consistent with rational and prudent risk management practices; and
 - (B) the methodology and data for determining the costs of the **risk management contracts** used in that hypothetical portfolio; and
 - (C) an explanation for any differences between the costs of the **risk management contracts** used in that hypothetical portfolio and similar actual **risk management contracts** traded by the **gentailer** in the same period; and
 - (ii) the **gentailer's** approach to identifying and calculating the retail operating costs, including the contribution to the **gentailer's** shared and common costs, in subclause (4)(c)(iv); and
 - (iii) any other material judgements made by the **gentailer** in undertaking the **retail price consistency assessment** together with an explanation for those judgements; and
 - (i) areas in which, and reasons why, the **gentailer** has departed from the guidance published by the **Authority** under subclause (3); and
 - (j) an explanation as to whether and how the results of the **retail price consistency assessment** are economically justifiable; and
 - (k) any additional information the **gentailer** reasonably considers may be required to assess the results of the **retail price consistency assessment**.
- (5) For the avoidance of doubt, the costs and prices referred to in subclause (4)(a) to (e) must be exclusive of **GST**.
- (6) A **retail price consistency assessment report** must be in the form specified by the **Authority**.
- (7) A **gentailer's retail price consistency assessment report** must be provided to the **Authority**—
- (a) within 45 **business days** after the date on which this subpart comes into force, in respect of the initial **retail price consistency assessment** referred to in subclause (1)(d)(i); and
 - (b) otherwise, within 45 **business days** of 1 January and 1 July each year.

13.236X Public reporting

- (1) A **gentailer** must prepare and publish public versions of the annual report referred to in clause 13.236V(1) or any **retail price consistency assessment report** prepared in accordance with clause 13.236W(4) on the **gentailer's** website within 10 **business days** of providing of the relevant report to the **Authority**.

- (2) When preparing a public version of an annual report or **retail price consistency assessment report**, a **gentailer** may redact information that is commercially sensitive or otherwise confidential, but any such redactions should be kept to a minimum to promote transparency.
- (3) The **gentailer's** public version of any annual report or **retail price consistency assessment report** must be—
 - (a) provided to the **Authority** at the same time as submitting the relevant annual report or **retail price consistency assessment report**; and
 - (b) accompanied by an explanation of the basis for any redactions made under subclause (2).

13.236Y Self-reporting of breaches

- (1) If a **gentailer** believes, on reasonable grounds, that it may have breached this subpart, the **gentailer** must report the alleged breach to the **Authority** as soon as reasonably practicable, and no later than 20 **business days** after the **gentailer** becomes aware of the alleged breach.
- (2) Any report under subsection (1) must be in writing and must specify—
 - (a) the relevant provision of this subpart allegedly breached; and
 - (b) the circumstances relating to the alleged breach; and
 - (c) the extent and impact of the alleged breach, including any affected **parties** or processes; and
 - (d) any remedial actions taken or proposed; and
 - (e) the date and time the alleged breach occurred.

...

13.256 [Revoked]

13.257 [Revoked]

13.258 [Revoked]

Provision of retail gross margin reports by retailers and gentailer cost information

13.259 Provision of retail gross margin report by retailers

- (1) Each **retailer** must provide a **retail gross margin report** to the **Authority** no later than 90 days after the end of the **retailer's financial year**.
- (2) Subclause (1) does not apply to—
 - (a) any **retailer** who was recorded in the **registry** in any of the preceding 12 months as being responsible for less than 1% of the total number of **ICPs** registered in the **registry** with an **ICP** status of "Active"; or
 - (b) any **gentailer**.
- (3) The **retail gross margin report** must consist of the following information (exclusive of **GST**) relating to the sale of **electricity** to **mass market customers** for the **financial year** by the **retailer**:
 - (a) the total amount of **electricity** sold by the **retailer** to **mass market customers**

expressed as **MWhs**:

- (b) revenue derived from the sale of **electricity** to **mass market customers** expressed as an amount of dollars per **MWh**:
 - (c) cost of **electricity** sold by the **retailer** to **mass market customers** expressed as an amount of dollars per **MWh**:
 - (d) cost of **metering** services associated with the sale of **electricity** to **mass market customers** expressed as an amount per **MWh**:
 - (e) cost of **distribution** services associated with the sale of **electricity** to **mass market customers** expressed as an amount per **MWh**:
 - (f) cost of transmission services, being those services provided by **Transpower** under a **transmission agreement**, paid by the **retailer** associated with the supply of **electricity** to **mass market customers** by the **retailer** expressed as an amount per **MWh**:
 - (g) cost of levies associated with the supply of **electricity** to **mass market customers** by the **retailer** expressed as an amount per **MWh**.
- (4) A **retail gross margin report** must be prepared in accordance with generally accepted accounting practices and in the form and in the manner specified by the **Authority**.
- (5) Where a **retailer** and one or more other **retailers** are related companies, as defined in section 2 of the Companies Act 1993, and are required by subclause (1) to provide a **retail gross margin report** to the **Authority**—
- (a) the obligation in subclause (1) is met by one of those **retailers** providing the **retail gross margin report** relating to all the **retailers** on a consolidated basis for all the **retailers** to the **Authority**; and
 - (b) in any such case, the **retailer** providing the information must identify the other **retailers**, as part of the information provided.

13.259A Provision of cost information by gentailers

- (1) Each **gentailer** must provide the information in subclause (2) to the **Authority** no later than 90 days after the end of the **gentailer's financial year**.
- (2) Each **gentailer** must provide the following information (exclusive of **GST**) to the **Authority**, relating to the sale of **electricity** to **mass market customers** for the **financial year** by the **gentailer**—
- (a) cost of **metering** services associated with the sale of **electricity** to **mass market customers** expressed as an amount per **MWh**; and
 - (b) cost of **distribution** services associated with the sale of **electricity** to **mass market customers** expressed as an amount per **MWh**; and
 - (c) cost of transmission services, being those services provided by **Transpower** under a **transmission agreement**, paid by the **gentailer** associated with the supply of **electricity** to **mass market customers** by the **gentailer** expressed as an amount per **MWh**; and
 - (d) cost of levies associated with the supply of **electricity** to **mass market customers** by the **gentailer** expressed as an amount per **MWh**.
- (3) The information in subclause (2) must be prepared in accordance with generally accepted accounting practices and in the form and in the manner specified by the **Authority**.

13.260 Publication of information contained in retail gross margin reports and gentailer cost information by the Authority

- (1) The **Authority** may **publish** the information received in a **retail gross margin report**, except that information contained in a **retail gross margin report** submitted by a **retailer** with less than 5% of total market share by **ICP** with a status of “Active” must be anonymised so as not to identify that **retailer**.
- (2) The **Authority** may **publish** information provided by a **gentailer** to the **Authority** under clause 13.259A.

Authority may require review of retail gross margin reports and gentailer cost information

13.261 Authority may require review of retail gross margin reports and gentailer cost information by independent person

The **Authority** may, in its discretion, require a review by an independent person of whether—

- (a) a **retailer** may not have complied with clause 13.259; and
- (b) a **gentailer** may not have complied with clause 13.259A.

13.262 Nomination of independent person to undertake review

- (1) If the **Authority** requires a review under clause 13.261—
 - (a) the **Authority** must require the **retailer** or **gentailer** to nominate an appropriate independent person to undertake the review; and
 - (b) the **retailer** or **gentailer** must provide that nomination within a reasonable timeframe.
- (2) The **Authority** may direct the **retailer** or **gentailer** to appoint the person nominated under subclause (1) or to nominate another person for approval.
- (3) If the **retailer** or **gentailer** fails to nominate an appropriate person under subclause (1) within 5 **business days**, the **Authority** may direct the **retailer** or **gentailer** to appoint a person of the **Authority**'s choice.
- (4) The **retailer** or **gentailer** must appoint a person to undertake the review in accordance with a direction made under subclause (2) or subclause (3).

13.263 Factors relevant to a direction under clause 13.262

- (1) In making the direction required by clause 13.262(2) or clause 13.262(3), the **Authority** may have regard to any factors it considers relevant in the circumstances, including the following:
 - (a) the degree of independence between the **retailer** or **gentailer** and the person nominated under clause 13.262(1); and
 - (b) the expected quality of the review; and
 - (c) the expected costs of the review.
- (2) For the purposes of subclause (1)(a), the **Authority** may have regard to the special definition of independent under clause 1.4 but it is not bound by that definition.

13.264 Carrying out of review by independent person

- (1) A **retailer** or **gentailer** subject to a review under clause 13.261 must, on request from the person undertaking the review, provide that person with such information as the

person reasonably requires in order to carry out the review.

- (2) The **retailer** or **gentailer** must provide the information no later than 10 **business days** after receiving a request from the person for the information.
- (3) The **retailer** or **gentailer** must ensure that the person undertaking the review—
 - (a) produces a report on whether, in the opinion of that person, the **retailer** or **gentailer** may not have complied with clause 13.259 or 13.259A (as applicable); and
 - (b) submits the report to the **Authority** within the timeframe specified by the **Authority**.
- (4) The report produced under subclause (3)(a) must include any other information that the **Authority** may reasonably require.
- (5) Before the report is submitted to the **Authority**, any identified failure of the **retailer** or **gentailer** to comply with clauses 13.259 or 13.259A (as applicable) must be referred back to the **retailer** or **gentailer** for comment.
- (6) The comments of the **retailer** or **gentailer** must be included in the report.

13.265 Payment of review costs

- (1) If a report received under clause 13.264(3)(a) establishes, to the **Authority's** reasonable satisfaction, that the **retailer** or **gentailer** may not have complied with clauses 13.259 or 13.259A (as applicable) (whether or not the **Authority** appoints an investigator to investigate the alleged breach), the **retailer** or **gentailer** must pay the costs of the person who undertook the review.
- (2) Despite subclause (1), if a report establishes, to the **Authority's** reasonable satisfaction that any non-compliance of the **retailer** or **gentailer** is minor or there is any other reason in the **Authority's** view that means the **retailer** or **gentailer** should not pay the costs of the person who undertook the review, the **Authority** may, in its discretion, determine the proportion of the person's costs that the **retailer** or **gentailer** must pay, and the **retailer** or **gentailer** must pay those costs.
- (3) If a report establishes to the **Authority's** reasonable satisfaction that the **retailer** or **gentailer** has complied with clauses 13.259 or 13.259A (as applicable), the **Authority** must pay the person's costs.

13.266 Requirement to provide complete and accurate information

- (1) In addition to the requirements of clause 13.2, the **retailer** or **gentailer** must take all practicable steps to ensure that the information that the **retailer** or **gentailer** is required to provide to any person under clauses 13.259 or 13.259A (as applicable) is complete and correct.
- (2) If a **retailer** or **gentailer** becomes aware that any information the **retailer** or **gentailer** provided under clauses 13.259 or 13.259A (as applicable) does not comply with subclause (1) or clause 13.2, even if the **retailer** or **gentailer** has taken all practicable steps to ensure that the information complies, the **retailer** or **gentailer** must, as soon as practicable, provide such further information as is necessary to ensure that the information provided complies with clauses 13.259 or 13.259A (as applicable), or clause 13.2 (as relevant).